ROKIAH MHD NOOR v. MENTERI PERDAGANGAN DALAM NEGERI KOPERASI & KEPENGGUNAAN MALAYSIA & ORS

FEDERAL COURT, PUTRAJAYA
AHMAD MAAROP CJ (MALAYA)
RICHARD MALANJUM CJ (SABAH & SARAWAK)
ZAHARAH IBRAHIM FCJ
AZIAH ALI FCJ
JEFFREY TAN FCJ
[CIVIL APPEAL NO: 01-23-07-2016(W)]
12 MARCH 2018

ADMINISTRATIVE LAW: *Public officer – Disciplinary action - Disciplinary Committee ('DC') - Disciplinary action against Deputy CEO of Companies Commission of Malaysia - Recommendation by DC to Minister for revocation and dismissal from service - Appointment as Deputy CEO by Minister - Whether Minister's power limited to revoking appointment - Whether Minister had actual or delegated power to dismiss - Whether only DC could dismiss Deputy CEO - Whether dismissal void - Companies Commission of Malaysia Act 2001, ss. 6, 7, 8(4) & 11 - Statutory Bodies (Discipline and Surcharge) Act 2000, Second Schedule, regs. 3(2)(d), (g), 39*

LABOUR LAW: *Employment – Public servant – Public officer – Disciplinary Committee ('DC') – Disciplinary action against Deputy CEO of Companies Commission of Malaysia – Recommendation by DC to Minister for revocation and dismissal from service – Appointment as Deputy CEO by Minister – Whether Minister has power only to revoke appointment – Whether only DC could dismiss Deputy CEO – Whether Minister had actual or delegated power to dismiss – Whether dismissal void – Companies Commission of Malaysia Act 2001, ss. 6, 7, 8(4) & 11 – Statutory Bodies (Discipline and Surcharge) Act 2000, Second Schedule, regs. 3(2)(d), (g), 39*

The appellant joined the Malaysian civil service as a Trade Registration Officer of the former Ministry of Trade and Industry. When the Companies Commission of Malaysia ('the second respondent') was established on 16 April 2002, the appellant was absorbed as its permanent employee. On 22 April 2008, the Minister appointed the appellant as the Deputy CEO of the second respondent pursuant to s. 11(4) of the Companies Commission of Malaysia Act 2001 ('Act 614') for a term of three years and later extended to 5 December 2013. Prior to her appointment as the Deputy CEO of the second respondent, the appellant was the Director of Registration Services of the second respondent. On 30 December 2011, the appellant accepted the option to retire at the age of 60 *ie*, on 5 December 2015 under the Statutory and Local Authorities Pensions Act 1980. However, the appellant was dismissed on 1 December 2012 consequent to a disciplinary action initiated

against her on the grounds that she had breached reg. 3(2)(d) or (g) of the Second Schedule to Statutory Bodies (Discipline and Surcharge) Act 2000 ('Act 605'). The appellant was alleged to have co-authored a letter entitled 'Integrity and Leadership Crisis in the Companies Commission of Malaysia' addressed to the Board of the second respondent and carbon copied to third parties including, among others, the Prime Minister, the Deputy Prime Minister and the Chief Secretary of the Government. The Disciplinary Committee (Special Cases) ('DC') found the appellant guilty on both charges and recommended to the Minister, pursuant to s. 8(3) of Act 605 and on 28 November 2012, the Minister notified the appellant that her contract of service was terminated and her appointment as Deputy CEO of the second respondent was revoked, both pursuant to s. 11(1)(b) of Act 614 with effect from 1 December 2012. The appellant challenged the lawfulness of her dismissal by way of judicial review in the High Court. The High Court held that the DC had proceeded in compliance with the statutory requirements and dismissed the appellant's application. The appellant's appeal to the Court of Appeal was also dismissed. Hence, the appellant obtained leave to raise the question of law that, in a case where the appellant, being the Director of Registration Services Division of the second respondent was appointed under s. 11 of Act 614 to become a Deputy CEO of the second respondent for a fixed term, whether the Minister, under s. 11 of Act 614 , when revoking the fixed term appointment made by him, could concurrently terminate the employment of the appellant as an employee or officer of the second respondent.

Held (allowing appeal with costs; answering question of law in negative) Per Jeffrey Tan FCJ delivering the judgment of the court:

(1) Article 135(1) of the Federal Constitution ('FC') provides that, as a member of the public service, the appellant could not be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank. The second proviso to art. 135 of the FC provides that, except where the provision to art. 135(2) applied, the appellant could only be 'dismissed or reduced in rank by an authority in pursuance of a power delegated to it by a Commission to which this Part applies ...'. Except where the proviso to art. 135(2) of the FC applied or where early retirement was opted for, the appellant would retire from the public service on attaining the age of retirement. Retirement on attainment of the age of retirement was unaffected when the appellant opted to serve as an employee of the second respondent. Accordingly, the appellant should retire from the service with the second respondent on attaining the age of 60 years. (paras 13 & 14)

(2) When the appellant opted to serve the second respondent, the disciplinary authority with jurisdiction to adjudicate over a disciplinary hearing against an errant officer is the appropriate Disciplinary Committee established in accordance with Part I of the Third Schedule to Act 605. However, Act 605 provides for a Special Disciplinary Committee to adjudicate over the disciplinary hearing against a Director General and his deputy. Pursuant to s. 7 of Act 605, an officer has a right of appeal to the Disciplinary Appeal Committee. At the same time, s. 8(4) of Act 605 provides that 'the decision of ... the Minister ... in respect of a Director General or his deputy shall be final'. The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. However, s. 7 and s. 8(4) of Act 605 could not both be applied without conflict. (paras 15, 16 & 18-21)

(3) Section 8(4) could not be construed to mean that the decision of the Minister shall be final against the Director General or his deputy. Such a reading would not only be at odds with s. 7 of Act 605 but would also produce an unjust result – the Director General and deputies alone would not have the right to appeal against whatever decision to the Disciplinary Appeal Committee. If one construction will do manifest injustice and the other avoid it, the latter construction should be adopted. But properly interpreted, s. 8(4) merely provides that the recommendation may or may not be accepted by the Yang di-Pertuan Agong or the Minister by whom the Director General or his deputy was appointed. Whether accepted or turned down, the decision of the Yang di-Pertuan or the Minister shall be final as against the DC. The Director General and deputy would still have a right to appeal to the Disciplinary Appeal Committee. Only such an interpretation would give sense to both provisions without internal conflict or inconsistency. (para 23)

(4) There is a world of difference between grade and post in the public service. Every officer joins the public service at a certain grade. He/she is promoted or demoted in grade. If a post is to be held by an officer of a certain grade, then the officer to assume and execute the duties of that post must be an officer of the required grade, either in current position or with promotion. But once an officer is promoted or demoted to a certain grade, his/her grade stays with him/her until his/her early or compulsory retirement. His/her post may change or may even be taken away altogether. An officer may not even hold a post, but his/her last grade will stay unaffected, regardless of the attendance or absence of an official post. And unless dismissed, an officer retires only upon him/her attaining the retirement age. (para 24)

(5) Prior to her appointment as the Deputy CEO of the second respondent, the appellant was the Director of Registration of Services of the second respondent. Her appointment as the Deputy CEO was made pursuant to s. 11 of Act 614 and therefore, the Minister was only empowered to revoke the appointment of the appellant as the Deputy CEO. (paras 25 & 26)

(6) The second respondent was the appointing and therefore the dismissing authority. Pursuant to s. 6 and reg. 39 of Act 605, the power of dismissal was delegated to the DC. Only the DC could dismiss the appellant. The Minister was empowered to accept or turn down the recommendation of the DC to appoint or revoke the appointment of the appellant as the Deputy CEO. The Minister had no actual or delegated power to dismiss the appellant. The DC found the appellant guilty and made the recommendation to the Minister to revoke the appointment of the appellant as the Deputy CEO and to dismiss the appellant, which the Minister accepted. In the absence of such power to execute the will of the DC with respect to dismissal, the appellant's dismissal by the Minister was void. The second respondent was ordered to pay the appellant (i) wages at her last grade for the period from date of dismissal to 5 December 2015; and (ii) all gratuities and retirement benefits calculated as if the appellant had retired on 5 December 2015. (paras 29-31 & 33)

Bahasa Malaysia *Headnotes*

Perayu memasuki perkhidmatan sivil Malaysia sebagai Pegawai Pendaftaran Perdagangan dalam Kementerian Perdagangan dan Industri terdahulu. Apabila Suruhanjaya Syarikat Malaysia ('responden kedua') dibentuk pada 16 April 2002, perayu dilantik ke jawatan tetap. Pada 22 April 2008, Menteri melantik perayu sebagai Timbalan Ketua Pegawai Eksekutif ('Timbalan CEO') responden kedua menurut s. 11(4) Akta Suruhanjaya Syarikat Malaysia 2001 ('Akta 614') bagi tempoh tiga tahun dan kemudian dilanjutkan sehingga 5 Disember 2013. Sebelum pelantikannya sebagai Timbalan CEO responden kedua, perayu adalah Pengarah Perkhidmatan Pendaftaran responden kedua. Pada 30 Disember 2011, perayu menerima opsyen persaraan pada umur 60 tahun iaitu 5 Disember 2015 bawah Akta Pencen Pihak-pihak Berkuasa Berkanun dan Tempatan 1980. Walau bagaimanapun, perayu dibuang kerja pada 1 Disember 2012 berikutan tindakan tatatertib yang dimulakan terhadapnya atas alasan-alasan bahawa dia telah melanggar peraturan 3(2)(d) dan (g) Jadual Kedua Akta Badan-Badan Berkanun (Tatatertib dan Surcaj) 2000 ('Akta 605'). Perayu didakwa telah menulis bersama-sama dengan seorang yang lain, sepucuk surat bertajuk 'Integrity and Leadership Crisis in the Companies Commission of Malaysia'

yang dialamatkan kepada Lembaga responden kedua dan dihantar salinan kepada pihak-pihak ketiga termasuk, antara lain, Perdana Menteri, Timbalan Perdana Menteri dan Ketua Setiausaha Kerajaan. Lembaga Tatatertib (Keskes Khas) ('LT') mendapati perayu bersalah atas kedua-dua kesalahan dan memberikan cadangan kepada Menteri menurut s. 8(3) Akta 605 dan pada 28 November 2012, Menteri memaklumkan kepada perayu bahawa kontrak perkhidmatannya ditamatkan dan pelantikannya sebagai Timbalan CEO responden kedua dibatalkan, kedua-duanya bawah s. 11(1)(b) Akta 614 berkuat kuasa 1 Disember 2012. Perayu mencabar kesahan pembuangan kerjanya melalui semakan kehakiman di Mahkamah Tinggi. Mahkamah Tinggi memutuskan bahawa LT telah mematuhi keperluan statutori dan menolak permohonan perayu. Rayuan perayu ke Mahkamah Rayuan juga ditolak. Dengan itu, perayu memperoleh kebenaran untuk membangkitkan soalan undang-undang bahawa, dalam kes di mana perayu, sebagai Pengarah Bahagian Perkhidmatan Pendaftaran responden kedua dilantik bawah s. 11 Akta 614 sebagai Timbalan CEO responden kedua bagi tempoh tetap, sama ada Menteri, bawah s. 11 Akta 614, apabila membatalkan pelantikan bagi tempoh tetap yang dibuatnya, boleh sekali gus menamatkan pekerjaan perayu sebagai pekerja atau pegawai responden kedua.

Diputuskan (membenarkan rayuan dengan kos; menjawab soalan secara negatif)

Oleh Jeffery Tan HMP menyampaikan penghakiman mahkamah:

(1) Perkara 135 Perlembagaan Persekutuan ('Perlembagaan') memperuntukkan bahawa, sebagai ahli perkhidmatan awam, perayu tidak boleh dibuang kerjanya atau diturunkan pangkat oleh pihak yang di bawahnya yang mana, pada masa pembuangan kerja atau penurunan pangkat, mempunyai kuasa untuk melantik ahli perkhidmatan dengan pangkat yang sama. Proviso kedua per. 135(1) Perlembagaan memperuntukkan bahawa, kecuali di mana peruntukan per. 135(2) terpakai, perayu hanya boleh 'dibuang kerja atau diturunkan pangkat oleh pihak berkuasa menurut kuasa yang diberikan kepadanya oleh Suruhanjaya yang mana Bahagian ini terpakai ...'. Kecuali di mana proviso pada per. 135(2) Perlembagaan terpakai atau di mana persaraan awal dipilih, perayu akan bersara daripada perkhidmatan awam apabila mencapai umur persaraan. Persaraan selepas mencapai umur persaraan tidak terjejas apabila perayu memilih untuk berkhidmat sebagai pekerja responden kedua. Dengan itu, perayu sepatutnya bersara daripada perkhidmatan responden kedua apabila mencecah umur 60 tahun.

(2) Apabila perayu memilih untuk berkhidmat dengan responden kedua, pihak berkuasa tatatertib dengan bidang kuasa untuk menghakimi perbicaraan tatatertib terhadap pegawai yang bersalah adalah jawatankuasa tatatertib yang dibentuk sewajarnya menurut Bahagian I

Jadual Ketiga Akta 605. Walau bagaimanapun, Akta 605 memperuntukkan Jawatankuasa Tatatertib Khas untuk menghakimi perbicaraan tatatertib terhadap Ketua Pengarah dan timbalannya. Menurut s. 7 Akta 605, seorang pegawai mempunyai hak merayu kepada Jawatankuasa Rayuan Tatatertib. Pada masa yang sama, s. 8(4) Akta 605 memperuntukkan bahawa '... keputusan ... Menteri ... berkaitan dengan Ketua Pengarah dan timbalannya adalah muktamad'. Prinsip asas adalah bahawa perkataan-perkataan dalam statut mesti diberikan maksud biasa secara *prima facie*. Walau bagaimanapun, s. 7 dan s. 8(4) Akta 605 kedua-duanya tidak boleh dipakai tanpa wujudnya konflik.

(3) Seksyen 8(4) tidak boleh ditafsir untuk membawa maksud keputusan Menteri adalah muktamad terhadap Ketua Pengarah dan timbalannya. Pembacaan sedemikian bukan hanya bertentangan dengan s. 7 Akta 605 malahan ia akan menjurus pada keputusan yang tidak adil – Hanya Ketua Pengarah dan timbalannya tiada hak merayu terhadap apa-apa keputusan Jawatankuasa Rayuan Tatatertib. Jika satu pentafsiran mengakibatkan ketidakadilan dan satu lagi mengelak daripadanya, pentafsiran yang terkemudian perlu dipakai. Tetapi jika ditafsir secara wajar, s. 8(4) hanya memperuntukkan bahawa cadangan itu boleh atau tidak boleh diterima oleh Yang di-Pertuan Agong atau Menteri melantik Ketua Pengarah atau timbalannya. Sama ada diterima atau ditolak, keputusan Yang di-Pertuan Agong atau Menteri mestilah muktamad terhadap LT. Ketua Pengarah dan timbalannya masih mempunyai hak merayu kepada Jawatankuasa Rayuan Tatatertib. Hanya pentafsiran sedemikian yang munasabah bagi kedua-dua peruntukan tersebut tanpa konflik atau ketidakkonsistenan dalaman.

(4) Wujud perbezaan ketara antara gred dan jawatan dalam perkhidmatan awam. Setiap pegawai memasuki perkhidmatan awam dalam gred tertentu. Dia dinaikkan atau diturunkan gred. Jika jawatan dipegang pada sesuatu gred tertentu, maka pegawai itu menerima dan melaksanakan tanggungjawab bagi jawatan itu mestilah pegawai dalam gred yang diperlukan, sama ada dalam kedudukan semasa atau dengan kenaikan pangkat. Tetapi, sebaik sahaja seseorang pegawai dinaikkan atau diturunkan ke gred tertentu, gred itu kekal sehingga persaraan awal atau wajib. Jawatannya boleh bertukar atau dihapuskan sama sekali. Walaupun pegawai tersebut tidak memegang apa-apa jawatan, grednya yang terakhir akan kekal, tidak kira ada atau tiada jawatan rasmi. Dan kecuali dibuang kerja, seseorang pegawai hanya bersara jika dia mencapai umur persaraan.

(5) Sebelum pelantikannya sebagai Timbalan CEO responden kedua, perayu adalah Pengarah Pendaftaran Perkhidmatan responden kedua. Pelantikannya sebagai Timbalan CEO dibuat menurut s. 11 Akta 614 dan oleh itu, Menteri hanya berkuasa untuk membatalkan pelantikan perayu sebagai Timbalan CEO.

(6) Responden kedua adalah pihak berkuasa yang melantik dan oleh itu adalah pihak yang boleh membuang kerja. Menurut s. 6 dan peraturan 39 Akta 605, kuasa membuang kerja diwakilkan pada LT. Hanya LT boleh membuang kerja perayu. Menteri hanya berkuasa untuk menerima dan menolak cadangan LT, untuk melantik atau membatalkan pelantikan perayu sebagai Timbalan CEO. Menteri tiada kuasa sebenar atau yang diwakilkan untuk membuang kerja perayu. Lembaga Tatatertib mendapati perayu bersalah dan membuat cadangan kepada Menteri untuk membatalkan pelantikan perayu sebagai Timbalan CEO dan membuang kerjanya, yang mana diterima Menteri. Tanpa kuasa untuk melaksanakan kuasa LT berkaitan dengan pembuangan kerja, pembuangan kerja perayu oleh Menteri adalah batal. Responden kedua diperintahkan membayar kepada perayu: (i) gaji pada gred terakhirnya bagi tempoh dari tarikh pembuangan kerja sehingga 5 Disember 2015; dan (ii) kesemua ganjaran dan faedah pencen dikira seolah-olah perayu bersara pada 5 Disember 2015.

Case(s) referred to:

Accident Towing & Advisory Committee v. Combined Motor Industries Pty Ltd [1987] VR 529 ***(refd)***

B Surinder Singh Kanda v. The Government of The Federation Of Malaya [1962] 1 LNS 14 PC ***(refd)***

Badrulsham Mansor v. Ekran Bhd [2010] 2 LNS 0232 ***(refd)***

Bank Simpanan Nasional Finance Bhd & Anor v. Omar Hashim [2002] 1 ILR 272 ***(refd)***

Barium Chemicals Ltd v. Company Law Board AIR 1967 SC 295 ***(refd)***

Farrell v. Alexander [1976] 2 All ER 721 ***(refd)***

Grey v. Pearson [1857] 6 HL Cas 61 ***(refd)***

Ketua Polis Negara & Anor v. Goh Ching Huat [2011] 4 CLJ 237 FC ***(dist)***

Lim Eye Thun v. Majlis Peguam Malaysia & Anor [2010] 2 CLJ 45 CA ***(refd)***

Lionel v. Government of Malaysia [1971] 1 LNS 67 FC ***(refd)***

R v. L.T.H. [2008] 2 SCR 739 ***(refd)***

R v. Secretary of State and Industry ex p Greenpeace [1998] COD 98 ***(refd)***

Rokiah Mhd Noor v. Menteri Perdagangan Dalam Negeri, Koperasi & Kepenggunaan Malaysia & Ors and Another Case [2015] 6 CLJ 532 HC ***(refd)***

Rokiah Mhd Noor v. Menteri Perdagangan Dalam Negeri, Koperasi & Kepenggunaan Malaysia & Ors And Another Appeal [2016] 8 CLJ 635 CA ***(refd)***

Sabah Forest Industries Sdn Bhd v. UNP Plywood Sdn Bhd [2009] 6 CLJ 515 FC ***(refd)***

Sabdin Ghani v. Musa Aman [1993] 2 CLJ 109 HC ***(refd)***

Selvaratnam Vellupillai v. Dr Jayabalan Karrupiah [2009] 1 CLJ 872 FC ***(refd)***

Sim Kim Ong v. Goh Phaik Sooi [1975] 1 LNS 162 FC ***(refd)***

Subramanyam Sannasy v. SAC II Syed Alwi Syed Hamid & Anor [2010] 2 CLJ 677 FC ***(refd)***

Westminster Corporation v. London Western Railway [1905] AC 426 ***(refd)***

Legislation referred to:

Companies Commission of Malaysia Act 2001, ss. 6, 8, 11(1), (4), 21(1), (2)
Federal Constitution, arts. 8(1), 132(1), (2A), 135(1), (2)
Interpretation Acts 1948 and 1967, ss. 47, 94
Pensions Act 1980, s. 10(1)
Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980, GO. 26
Statutory Bodies (Discipline and Surcharge) Act 2000, ss. 2, 4, 6(1), 7, 8(2), (3), (4), Second Schedule regs. 3(2)(d), (g), 32(1), 33(1), 34, 35(1), (2), 36(1), 37, 38, 39, 40

Other source(s) referred to:

DC Pearce & RS Geddes, *Statutory Interpretation in Australia,* 4th edn, p 41
Sullivan on the Construction of Statutes, 6th edn, pp. 11.2-11.6, 11.51

For the appellant - Khoo Guan Huat & Alyshea Low; M/s Skrine
For the 1st, 3rd & 4th respondents - Suzana Atan & Natrah Idris; SFCs
For the 2nd respondent - Steven Thiru & Gregory Das; M/s Shook Lin & Bok

[Editor's note: For the Court of Appeal judgment, please see Rokiah Mhd Noor v. Menteri Perdagangan Dalam Negeri, Koperasi & Kepenggunaan Malaysia & Ors And Another Appeal [2016] 8 CLJ 635 (overruled).]

Reported by S Barathi

JUDGMENT

Jeffrey Tan FCJ:

[1] On the face of it, this appeal concerns only the immediate parties. But in truth, the outcome of this appeal would affect all members of the public services mentioned in art. 132(1) of the Federal Constitution and all employees of statutory bodies and local authorities governed by the Statutory Bodies (Discipline and Surcharge) Act 2000 (Act 605).

[2] The background facts could be summarised as follows. On 18 January 1980, the appellant joined the Malaysian Civil Service, as a Trade Registration Officer of the former Ministry of Trade and Industry. On 16 April 2002, the Companies Commission of Malaysia (second respondent) was established by the Companies Commission of Malaysia Act 2001 (Act 614). On the same day, the appellant was absorbed as a permanent employee of the second respondent. A few years later, on 22 April 2008 and pursuant to s. 11(4) of Act 614, the Minister appointed the appellant as the Deputy CEO of the second respondent for a term of three years, later extended to 5 December 2013. Prior to her appointment as Deputy CEO, the appellant was, since 1 July 2005, the Director of Registration Services of the second respondent. Meantime, on 30 December 2011, the appellant accepted the option to retire at age 60, that is, on 5 December 2015, under the Statutory and Local Authorities Pensions Act 1980 (as amended).

[3] But before the appellant could reach 60, she was dismissed on 1 December 2012. It was not disputed that the appellant co-authored a letter dated 25 October 2011 and entitled "Integrity and Leadership Crisis in the Companies Commission of Malaysia" that was addressed to the Board of the second respondent and carbon-copied to third parties including the Prime Minister, the Deputy Prime Minister, the Chief Secretary of the Government, the Minister of Domestic Trade, Co-operative and Consumerism, and the Malaysian Anti-Corruption Commission (for the contents of that letter dated 25 December 2001, see *Rokiah Mhd Noor v. Menteri Perdagangan Dalam Negeri, Koperasi & Kepenggunaan Malaysia & Ors and Another Case* [2015] 6 CLJ 532; [2015] 11 MLJ 1). On account of her co-authorship of that letter, disciplinary action was initiated against the appellant. On 12 April 2012, the second respondent informed the appellant that the Disciplinary Committee (Special Cases) (hereinafter referred to as DC) received a complaint that she (appellant) had breached reg. 3(2)(d) or (g) of the Second Schedule to Act 605. The charges against the appellant read:

(a) PERTUDUHAN

Bahawa kamu, Hjh Rokiah binti Mhd Noor, No. KP 551205-03-5110, Timbalan Ketua Pegawai Eksekutif (Operasi), semasa bertugas di Suruhanjaya Syarikat Malaysia (SSM) didapati telah berkelakuan dengan sedemikian cara sehingga mencemarkan nama SSM apabila kamu telah membuat sepucuk surat yang ditandatangani oleh kamu bertarikh 25hb Oktober 2011 bertajuk 'INTEGRITY AND LEADERSHIP CRISIS IN THE COMPANY COMMISSION MALAYSIA' yang telah diedar kepada pihak ketiga termasuk YAB Dato' Sri Mohd Najib Tun Abdul Razak, Perdana Menteri Malaysia dan YAB Tan Sri Muhyiddin Mohd. Yassin, Timbalan Perdana Menteri Malaysia yang mana pernyataan-pernyataan di bawah yang terkandung di dalam surat tersebut telah mencemarkan nama dan imej SSM:

i. Pakatan (Conspiracy) – Perenggan 5 muka surat 4 surat tersebut …

ii. MYCOID – Perenggan 5 (ii) muka surat 6 surat tersebut …

iii. Pakatan (Conspiracy) – Perenggan 7 muka surat 10 surat tersebut …

Oleh yang demikian perlakuan kamu ini telah melanggar Peraturan 3(2)(d), Peraturan-Peraturan Tatatertib Badan-Badan Berkanun, Bahagian II, Jadual Kedua, Akta Badan-Badan Berkanun (Tatatertib dan Surcaj) 2000 ….

(b) PERTUDUHAN PILIHAN

Bahawa kamu, Hjh Rokiah binti Mhd Noor, No. KP 551205-03-5110, Timbalan Ketua Pegawai Eksekutif (Operasi), semasa bertugas di Suruhanjaya Syarikat Malaysia (SSM) didapati telah berkelakuan tidak bertanggungjawab kepada SSM apabila kamu telah membuat sepucuk surat yang ditandatangani oleh kamu bertarikh 25hb Oktober 2011 bertajuk 'INTEGRITY AND LEADERSHIP CRISIS IN THE COMPANY COMMISSION MALAYSIA' yang telah diedar kepada

A pihak ketiga termasuk YAB Dato' Sri Mohd Najib Tun Abdul Razak, Perdana Menteri Malaysia dan YAB Tan Sri Muhyiddin Mohd. Yassin, Timbalan Perdana Menteri Malaysia yang mana dakwaan-dakwaan yang terkandung di dalam surat tersebut adalah seperti berikut:

i. Pakatan (Conspiracy) – Perenggan 5 muka surat 4 surat tersebut …

B ii. MYCOID – Perenggan 5 (ii) muka surat 6 surat tersebut …

iii. Pakatan (Conspiracy) – Perenggan 7 muka surat 10 surat tersebut …

Oleh yang demikian perlakuan kamu ini telah melanggar Peraturan 3(2)(g), Peraturan-Peraturan Tatatertib Badan-Badan Berkanun, Bahagian C II, Jadual Kedua, Akta Badan-Badan Berkanun (Tatatertib dan Surcaj) 2000.

[4] The second respondent called upon the appellant to submit a written representation to exculpate herself from conduct that allegedly brought the second respondent into disrepute or brought discredit to the second D respondent (principal charge) or conduct that was "irresponsible" (alternative charge). By letter dated 4 May 2012, the appellant responded to the charges. On 21 June 2012, the DC referred the matter to the Investigation Committee. On 27 September 2012, the Investigation Committee held that the appellant could not justify why the letter was circulated to third parties. On 31 October 2012, the DC found the appellant guilty on both charges and E recommended to the Minister, pursuant to s. 8(3) of Act 605, to dismiss the appellant from service. On 28 November 2012, the Minister notified the appellant that her contract of service was terminated and her appointment as Deputy CEO of the second respondent was revoked, both pursuant to s. 11(1)(b) of Act 614 (there no such s. 11(1)(b)) and with effect from F 1 December 2012, – "selaras dengan s. 11(1)(b) Akta Suruhanjaya Syarikat Malaysia 2001 (Akta 614) saya dengan ini menamatkan kontrak perhidmatan dan membatalkan pelantikan Puan sebagai Timbalan Pengarah Eksekutif". The appellant was thus cashiered with nothing more than an *ex gratia* payment of three months' wages and allowances.

G **[5]** The appellant applied for judicial review of her dismissal. No objection was raised by the respondents that the appellant had not adopted the statutory appeal procedure. At the High Court, the appellant challenged the lawfulness of her dismissal on the following grounds: defective charge; absence of proof of the elements of the charge; no investigation of the H contents of the letter dated 25 October 2011; failure by the Minister and second respondent to consider the Whistleblower Protection Act 2010; absence of a formal complaint of her alleged misconduct; absence of procedural fairness, in that the Minister and second respondent did not give their reasons for their decision; conflict of interest, as the second I respondent's CEO, who had pushed for disciplinary action to be initiated, was also involved in the disciplinary proceeding; a pre-judgment was made

on 19 November 2011 to dismiss the appellant; parties implicated in the letter dated 25 October 2011 served in the disciplinary and or investigative committees; the case should not have been classified as under "serious punishment"; the appellant was not informed that a *prima facie* case had been made out; the same punishment was not meted out to both co-authors; bias by the DC. All the same, the High Court held that the "DC had proceeded in compliance with the statutory requirements". The application for judicial review was dismissed. The appellant appealed to the Court of Appeal.

[6] According to the Court of Appeal, "the main complaint of the appellant (related) to the procedural propriety of the disciplinary process". The Court of Appeal held that there was due compliance with regs. 32(1), 33(1), 35(1) and (2), 36(1), 37, 39, 40 of the Second Schedule and with s. 11 of Act 614, that "CCM had followed through all the steps required by (Act 605)", that "it could not be argued that the (High Court) was wrong in dismissing the application for judicial review", that the DC took all relevant factors into account, that reg. 35(1) and (2) of Act 605 could not be construed to mean that the appellant had a right of hearing before the DC could decide on whether a *prima facie* case was made out, and that the appellant was not a whistleblower within the meaning of the Whistleblower Protection Act 2010. The appeal was dismissed (for the full judgment of the Court of Appeal, see *Rokiah Mhd Noor v. Menteri Perdagangan Dalam Negeri, Koperasi & Kepenggunaan Malaysia & Ors and Another Appeal* [2016] 8 CLJ 635).

[7] On 13 July 2016, the appellant obtained leave to raise the following question of law for the consideration of this court:

> In a case where the (Appellant), being the Director of Registration Services Division of the Companies Commission of Malaysia was appointed under section 11 of the Companies Commission of Malaysia Act 2001 to become a Deputy Chief Executive of the Companies Commission of Malaysia for a fixed term, whether the Minister, under section 11 of the Companies Commission of Malaysia Act 2001, when revoking the fixed term appointment made by him, can concurrently terminate the employment of the (Appellant) as an employee or officer of the Companies Commission of Malaysia.

[8] Before us, learned counsel for the appellant argued: Section 11 of Act 614 empowers the Minister to appoint qualified persons to be the Chief Executive Officer and deputies to the Chief Executive Officer. The appellant was appointed as Deputy CEO for a fixed term. At the same time, the appellant was also an employee of the second respondent and subject to s. 21 of Act 614. The appellant was appointed or seconded, for a fixed term, to perform the duties of Deputy CEO of the second respondent, without any derogation to her position as a permanent employee of the second respondent. The Minister was empowered to revoke the appointment of the

appellant as Deputy CEO. But the Minister had no powers to terminate the appellant as a permanent employee of the second respondent. "A statute must be construed in manner which carries out the intention of the Legislature and the intention of the Legislature must be gathered from the words of the statute itself." In interpreting s. 11 of Act 614, the Minister should be limited to the four walls of the powers conferred upon him by s. 11" (learned counsel cited *Westminster Corporation v. London Western Railway* [1905] AC 426 at 430; *Barium Chemicals Ltd v. Company Law Board* AIR 1967 SC 295 at 323). The Minister had no powers to concurrently terminate the appellant as an employee of the second respondent. Only the appointing authority has the authority to remove (learned counsel cited *Sabdin Ghani v. Musa Aman* [1993] 2 CLJ 109 at 113; ss. 47 and 94 of the Interpretation Acts 1948 and 1967; *Lim Eye Thun v. Majlis Peguam Malaysia & Anor* [2010] 2 CLJ 45; [2010] 2 MLJ 444 at 445; *B Surinder Singh Kanda v. The Government Of The Federation Of Malaya* [1962] 1 LNS 14; [1962] MLJ 169). The power to dismiss finds its source in the power to appoint. In the instant case, the power of the Minister to dismiss was limited to the position which the Minister had appointed.

[9] Learned Senior Federal Counsel appearing for the first, third and fourth respondents submitted as follows: The case was decided on the findings of fact of the High Court. The facts and supporting documents showed that disciplinary proceedings were carried out in accordance with the law. The decision to dismiss the appellant was made by the authority with the power to do so, which was the DC. "What transpired ... was that upon arriving at the decision to dismiss the appellant, the DC then made recommendations to the Minister that the appellant's contract of service in CCM be terminated and her position as the (deputy) CEO of CCM be revoked in accordance with s. 11 of Act 614." The Minister agreed with the aforesaid recommendations. Pursuant to s. 11 of Act 614, the Minister had the power to appoint and revoke the appellant's appointment as Deputy CEO. It was the DC that decided on dismissal. The disciplinary proceeding was conducted pursuant to the Second Schedule to Act 605. The Minister was party to the disciplinary proceeding pursuant to s. 8(3) of Act 605 read together with s. 11(1)(b) of Act 614. In para. 12 of his affidavit dated 25 July 2014, the Minister affirmed that under s. 8(4) of Act 605, he was entrusted with the duty to certify the decision of the DC made pursuant to reg. 40 of Act 605, to dismiss the appellant. The Minister gave effect to the findings of the DC. Even if answered in the negative, the question of law is of no consequence to the result, as the relief sought in the application for judicial review did not challenge the finding of misconduct. The relief sought was with respect to the Minister's letter dated 28 November 2012. In this appeal, the appellant merely challenged the decision of the Minister to issue the letter dated 28 November 2012; the appellant did not challenge the finding of misconduct. In other words, the disciplinary proceeding was unchallenged.

The only issue raised by the appellant was whether the decision of the DC was properly implemented by the letter dated 28 November 2012. Based on the facts and circumstances of the case, the legality of the disciplinary process was not affected by the issuance of the letter dated 28 November 2012. The disciplinary process remained valid and lawful. Even if the Minister had no power to inform the appellant of the decision of the DC, it remained only for the second respondent to issue a letter of dismissal. No prejudice was occasioned. The disciplinary proceeding was conducted in accordance with s. 8(2) of Act 605. The Minister certified the recommendations made by the DC. The Minister had correctly exercised his discretion to certify the recommendations of dismissal and revocation of appointment of Deputy CEO. Dismissal was valid in law.

[10] Learned counsel for the second respondent submitted as follows: The Minister is part of the employment structure within the second respondent under Act 614. The Minister is the designated ministerial authority under Act 614. Pursuant to ss. 6 and 8 of Act 614, the Minister is accorded appointment and revocation powers in respect of membership on the Commission. Pursuant to s. 11 of Act 614, the Minister is empowered to appoint and revoke the appointment of the Chief Executive Officer and his deputies. All substantive decisions were made by the DC. It was the DC that conducted the investigation and made the findings. "The Minister gave effect to the decision by exercising his powers under s. 11 to revoke the appellant's appointment and terminate her employment in consequence of his review of the findings and recommendations of the DC." The findings of the disciplinary process formed the core and foundation of the Minister's impugned decision. "The question of law does not challenge the heart of the dispute in the judicial review and is therefore of no consequence to the result of the appeal." This court has jurisdiction to dismiss the appeal and to decline to answer a question of law (learned counsel cited *Sabah Forest Industries Sdn Bhd v. UNP Plywood Sdn Bhd* [2009] 6 CLJ 515; [2010] 1 MLJ 765). The appellant sought not to challenge the propriety of the disciplinary process or the finding of misconduct. That rendered this appeal academic. The Court of Appeal held that the core issue was whether Act 605 had been complied with. The Court of Appeal held that Act 605 had been complied with. However, the focus of the question of law is whether the Minister had power to concurrently revoke the appellant's appointment as Deputy CEO and terminate her employment with the second respondent. "The only issue is whether those findings and decisions were properly implemented ... this is at best a peripheral issue, which would not affect the legality and propriety of the disciplinary action taken against the appellant". It is settled that a procedural defect in the manner in which a disciplinary punishment is effected, which is denied, would not render as void the disciplinary order/ punishment imposed. In *Subramanyam Sannasy v. SAC II Syed Alwi Syed*

Hamid & Anor [2010] 2 CLJ 677; [2010] 2 MLJ 597, the Federal Court held that an erroneous reference to a legislative provision in a dismissal letter would not render as void the decision to dismiss the officer. In *Selvaratnam Vellupillai v. Dr Jayabalan Karrupiah* [2009] 1 CLJ 872; [2009] 1 MLJ 794 at [21], the Federal Court dismissed a challenge premised on the complaint that the impugned punishment letter had not been signed by the chairman of the Disciplinary Committee. In the instant case, the challenge "that arises from the question of law is purely against the manner in which the disciplinary decisions were effected and not the decisions in themselves". Even if the question of law were answered in the negative, that is, that the Minister had no power to terminate the appellant's employment with the second respondent, "the effect of this finding is that CCM would just be required to issue a termination letter to rectify the process ..." There could be no question of the appellant returning to her previous position as Director of Registration Services, as the finding of misconduct and the recommendation of dismissal stood. The concurrent findings of the court below that upheld the disciplinary punishment would remain undisturbed even if the appellant were to succeed in obtaining an answer to the question of law in her favour. A further indication of the futility of the question of law is the narrow focus in the question. The appellant did not challenge the source of the Minister's decision – the findings of the DC. A judicial review challenge must be directed at the substantive act or decision which is the basis of complaint. That was made clear by Law J in *R v. Secretary of State and Industry ex p Greenpeace* [1998] COD 98. "CCM was at all times the substantive decision-maker in the disciplinary process .. The Minister was at best the executor of the decision." In any event, the Minister was empowered to terminate the appellant's employment as well as revoke her appointment for the following reasons: it was sufficient and proper for the employment of the appellant to be terminated by way of the Minister's revocation of her appointment as Deputy CEO, as the appointment of Deputy CEO was a ministerial appointment that was simultaneously a promotion; an employee's promotion entails a departure from his/her previous position to a position of a higher grade; once appointed to the promoted position of Deputy CEO, the appellant ceased to occupy her position as Director of Registration Services; the appellant had only one post when she assumed the position of Deputy CEO; the second respondent had only one post to remove the appellant from; the only circumstance under which the second respondent and Minister would have to issue separate letters to remove the appellant from her position within the second respondent would be where her appointment as Deputy CEO was a secondment; it was not a secondment, as the appointment of Deputy CEO was from her previous position within the second respondent, and also as secondment entails an employee's temporary transfer from his/her original employer to a completely different entity (learned counsel cited

Bank Simpanan Nasional Finance Bhd & Anor v. Omar Hashim [2002] 1 ILR 272); a secondment cannot involve a transfer to a higher position/ employment grade (learned counsel cite *Badrulsham Mansor v. Ekran Bhd* [2010] 2 LNS 0232); it is clear that the appellant's position at the second respondent was terminated upon revocation of her appointment as Deputy CEO by the letter dated 28 November 2012; "it is legally impossible to occupy two employment positions concurrently within the same employer; the appellant had only the position of Deputy CEO at the time of her dismissal". "Section 11 does not stipulate that the termination of the employment of the Deputy CEO can only be effected by CCM and not the Minister." Through the question of law, the appellant purported to argue that the Minister acted beyond his powers and that only CCM was empowered to effect the termination. The appellant sought to read into s. 11 of Act 614 a set of duties and obligations that did not exist. It was not open to the appellant to embark upon such an interpretative exercise, as it is settled that a body is not required to discharge functions beyond those prescribed under the statute in question. In *Ketua Polis Negara & Anor v. Goh Ching Huat* [2011] 4 CLJ 237; [2011] 3 MLJ 1, the Federal Court rejected the argument that the dismissal of a police officer was unlawful because the wrong authority had signed and issued the termination letter. In this connection, Richard Malanjum CJ (SS) observed that "there is also nothing in the O. 26 of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 requiring that a decision of the disciplinary authority must be notified only by it to the subject of a disciplinary action". It was sufficient for the appellant's employment to be terminated by way of the Minister's revocation of her appointment pursuant to s. 11 of Act 614. "... CCM treated the appellant's employment as at an end following the finding of guilt ... there is no scope to argue that her permanent position as a permanent employee subsisted following the issuance of the Minister's letter dated 28 November 2012."

A B C D E F G H I

Our Decision

[11] Article 132(2A) of the Federal Constitution provides as follows:

> Except as expressly provided by this Constitution, every person who is a member of any of the services mentioned in paragraphs (a), (b), (c), (d), (f) and (h) of Clause (1) holds office during the pleasure of the Yang di-Pertuan Agong, and, except as expressly provided by the Constitution of the State, every person who is a member of the public service of a State holds office during the pleasure of the Ruler or Yang di-Pertuan Negeri.

[12] Article 135 of the Federal Constitution imposes the following three restrictions on the doctrine of 'during the pleasure of the Yang di-Pertuan Agong':

(1) No member of any of the services mentioned in paragraphs (b) to (h) of Clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank:

Provided that in its application to members of the services mentioned in paragraph (g) of Clause (1) of Article 132 this Clause shall not apply to any law which the legislature of any State, other than Penang and Malacca, may make to provide that all powers and functions of a Public Service Commission of such State, other than the power of first appointment to the permanent or pensionable establishment, be exercised by a Board appointed by the Ruler of such State:

And provided further that this Clause shall not apply to a case where a member of any of the services mentioned in this Clause is dismissed or reduced in rank by an authority in pursuance of a power delegated to it by a Commission to which this Part applies, and this proviso shall be deemed to have been an integral part of this Clause as from Merdeka Day.

(2) No member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard:

Provided that this clause shall not apply to the following cases:

(a) where a member of such a service is dismissed or reduced in rank on the ground of conduct in respect of which a criminal charge has been proved against him; or

(b) where the authority empowered to dismiss or reduce in rank a member of such a service is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to carry out the requirements of this Clause; or

(c) where the Yang di-Pertuan Agong, or, in the case of a member of the public service of a State, the Ruler or Yang di-Pertuan Negeri of that State, is satisfied that in the interests of the security of the Federation or any part thereof it is not expedient to carry out the requirements of this Clause; or

(d) where there has been made against a member of such a service any order of detention, supervision, restricted residence, banishment or deportation, or where there has been imposed on such a member any form of restriction or supervision by bond or otherwise, under any law relating to the security of the Federation or any part thereof, prevention of crime, preventive detention, restricted residence, banishment, immigration, or protection of women and girls:

Provided further that for the purpose of this Article, where the service of a member of such a service is terminated in the public interest under any law for the time being in force or under any regulation made by the Yang

di-Pertuan Agong under Clause (2) of Article 132, such termination of service shall not constitute dismissal whether or not the decision to terminate the service is connected with the misconduct of or unsatisfactory performance of duty by such member in relation to his office or the consequences of the termination involved an element of punishment; and this proviso shall be deemed to have been an integral part of this Article as from Merdeka Day.

(3) No member of any of the services mentioned in paragraph (c), (f) or (g) of Clause (1) of Article 132 shall, without the concurrence of the Judicial and Legal Service Commission, be dismissed or reduced in rank or suffer any other disciplinary measure for anything done or omitted by him in the exercise of a judicial function conferred on him by law.

[13] As a member of the public service, the appellant could not be "dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank" (art. 135(1) of the Federal Constitution). Except where the provision to art. 135(2) applied, the appellant could only be "dismissed or reduced in rank by an authority in pursuance of a power delegated to it by a Commission to which this Part applies …" (second proviso to art. 135(1) of the Federal Constitution). And except where the proviso to art. 135(2) of the Federal Constitution applied or where early retirement was opted for, the appellant would retire from the public service on attaining the age of retirement (now 60 years – s. 10(1) of the Pensions Act 1980).

[14] Retirement on attainment of the age of retirement was unaffected when the appellant opted to serve as an employee of the second respondent. Section 21(2) of Act 614 stipulates that "every such person who opts under sub-s. (1) to serve as an employee of the Commission shall be employed by the Commission on terms and conditions of service not less favourable than the terms and conditions of service to which he was entitled immediately before the appointed date". Accordingly, the appellant should retire from service with the second respondent on attaining the age of 60 years.

[15] But there was a change in the disciplinary authority when the appellant opted to serve the second respondent. Section 6(1) of Act 605, which applies to the second respondent (see s. 2 read together with s. 4 of Act 605), provides that "the disciplinary authorities in respect of the various categories of officers shall be the Disciplinary Committees established in accordance with Part I of the Third Schedule and the provisions of that Part shall apply to, and be complied with by, every Disciplinary Committee so established". The disciplinary authority with jurisdiction to adjudicate over a disciplinary hearing against an errant officer is the appropriate Disciplinary Committee established in accordance with Part I of the Third Schedule to Act 605.

A **[16]** But Act 605 provides for a Special Disciplinary Committee to adjudicate over the disciplinary hearing against a Director General ("Director General means the person, by whatever name called, who is charged with the day to day administration and management of the affairs of a statutory body" (s. 4 of Act 605)] and his deputy. Section 8 of Act 605 B provides:

> (1) Where the Director General or his deputy is appointed by the Yang di-Pertuan Agong, the Disciplinary Committee in respect of such Director General or such deputy shall consist of the Minister as chairman and two members of the Board appointed by the Minister.
>
> C (2) Where the Director General or his deputy is appointed by the Minister, the Disciplinary Committee in respect of such Director General or such deputy shall consist of the Secretary General of the Ministry and two members of the Board appointed by such Secretary General.
>
> (3) A Disciplinary Committee established under subsection (1) or (2) shall D have the power to conduct disciplinary proceedings against the Director General or his deputy over whom it has jurisdiction and may make any recommendation to the Yang di-Pertuan Agong or the Minister by whom the Director General or his deputy was appointed as to the punishment to be imposed on or any other action to be taken against such Director General or his deputy.
>
> E (4) The decision of the Yang di-Pertuan Agong or the Minister, as the case may be, in respect of a Director General or his deputy shall be final.

[17] Section 7 of Act 605 provides that "an officer who has been found guilty of a disciplinary offence by a Disciplinary Committee may appeal F against such decision to the appropriate Disciplinary Appeal Committee established in accordance with Part II of the Third Schedule and the Appendix to that Schedule and the provisions of that Part shall apply to, and be complied with by, every Disciplinary Appeal Committee so established". An "'officer' means a person who is employed on a permanent, temporary or contractual basis by a statutory body, and is paid emoluments by the G statutory body, and includes a person who is seconded to any subsidiary corporation or company of the statutory body or any other statutory body or any Ministry, department or agency of the Federal Government or any department or agency of the Government of any State or any company in which the Federal Government or the Government of any State has an H interest" (s. 4 of Act 605).

[18] An officer has a right of appeal to the Disciplinary Appeal Committee. Yet at the same time, s. 8(4) of Act 605 provides that "the decision of … the Minister … in respect of a Director General or his deputy shall be final".

I

[19] "The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning" (*Sim Kim Ong v. Goh Phaik Sooi* [1975] 1 LNS 162; [1976] 1 MLJ 232 per Lee Hun Hoe CJ (Borneo) (Suffian LP and Wan Sulaiman FJ in agreement). A

[20] However, "It is presumed that the provisions of legislation are meant to work together both logically and teleologically, as part of a functioning whole. The parts are presumed to fit together logically to form a rational, internally consistent framework; and because the framework has a purpose, the parts are also presumed to work dynamically, each contributing something towards the intended goal (*R v. L.T.H.* [2008] 2 SCR 739). The presumption of coherence is also expressed as a presumption against internal conflict. It is presumed that the body of legislation enacted by a legislation does not contain contradictions or inconsistencies, that each provision is capable of operating without coming into conflict with any other ... The presumption of coherence is virtually irrebuttable ... contradiction or inconsistency cannot be tolerated; some method of reconciliation must be found. The courts have a number of strategies to ensure this result … If the provisions cannot both apply without conflict, the courts resort to … (1) legislative intent, whether express or implied; (2) strained interpretation; (3) the paramountcy of some categories of legislation over others; (4) implied exception (*generalia specialibus non derogant*); and (5) implied repeal" (*Sullivan on the Construction of Statutes,* 6th edn, at 11.2-11.6). B C D E

[21] When given their ordinary meaning, a right of appeal (s. 7 of Act 605) and the decision of the Minister shall be final (s. 8(4) of Act 605) could not both be applied without conflict.

[22] "Conflicts that arise in applying legislation, along with internal inconsistencies, are well recognised forms of absurdity which courts do their best to avoid, even at the cost of a strained or implausible meaning to a provision. As Lord Wensleydale wrote in *Grey v. Pearson* [1857] 6 HL Cas 61, 106: 'the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity or inconsistency, but not farther'" (*Sullivan on the Construction of Statutes supra* at 11.51). Lord Simon in *Farrell v. Alexander* [1976] 2 All ER 721, at 735-736, said: "The first or 'golden' rule is to ascertain the primary and natural sense of the statutory words in their context, since it is to be presumed that it is in this sense that the draftsman is using the words in order to convey what it is that Parliament meant to say. They will only be read in some other sense if that is necessary to obviate injustice, absurdity, anomaly or contradiction, or to prevent impediment of the statutory objective". "… conflict should be avoided F G H I

through interpretation … there are two ways to avoid conflict interpretation … The first is to show that, properly interpreted, the apparently conflicting provisions do not overlap and therefore cannot conflict … The other way of avoiding conflict acknowledges that, given their ordinary meaning, the provisions do overlap and if both were applied in accordance with their meaning they would conflict. To avoid the conflict, the court gives one of them a strained interpretation or reads one of them down" (*Sullivan on the Construction of Statutes supra* at 11.38). McGarvie J in *Accident Towing & Advisory Committee v. Combined Motor Industries Pty Ltd* [1987] VR 529 at 548 made the point that the responsibility rests with the court for the interpretation to be placed on an enactment.

[23] All officers have a right of appeal to the Disciplinary Appeal Committee. Article 8(1) of the Federal Constitution stipulates that "all persons are equal before the law and entitled to the equal protection of the law". A Director General or his deputy has the equal protection of the law. Pursuant to s. 8(3) of Act 605, the DC "may make any recommendation to the Yang di-Pertuan Agong or the Minister by whom the Director General or his deputy was appointed as to the punishment to be imposed on or any other action to be taken against such Director General or his deputy". Section 8(4) of Act 605 provides that "the decision of the Yang di-Pertuan Agong or the Minister, as the case may be, in respect of a Director General or his deputy shall be final". But s. 8(4) could not be construed to mean that the decision of the Minister shall be final against the Director General or his deputy. Such a reading would not only be at odds with s. 7 of Act 605 but would also produce an unjust result – the Director General and deputies alone would not have the right to appeal against whatever decision to the Disciplinary Appeal Committee. "If one construction will do manifest injustice and the other avoid it, the latter construction should be adopted" (*Statutory Interpretation in Australia* by DC Pearce and RS Geddes, 4th edn at p. 41). But properly interpreted, the said s. 8(4) merely provides that the recommendation may or may not be accepted by the Yang di-Pertuan Agong or the Minister by whom the Director General or his deputy was appointed. Whether accepted or turned down, the decision of the Yang di-Pertuan Agong or the Minister shall be final as against the DC. The Director General and deputy would still have a right to appeal to the Disciplinary Appeal Committee. Only such an interpretation would give sense to both provisions without internal conflict or inconsistency.

[24] This is the suitable juncture to address the core issue raised in the question of law – whether the Minister could dismiss the appellant or could dismiss the appellant in the manner adopted. First, it must be borne in mind that there is a world of difference between grade and post in the public service. Every officer joins the public service at a certain grade. He/she is

promoted or demoted in grade. If a post is to be held by an officer of a certain grade, then the officer to assume and execute the duties of that post must be an officer of the required grade, either in current position or with promotion. But once an officer is promoted or demoted to a certain grade, his/her grade stays with him/her until his/her early or compulsory retirement. His/her post may change or may even be taken away altogether. An officer may not even hold a post. But his/her last grade will stay unaffected, regardless of the attendance or absence of an official post. And unless dismissed, an officer retires only upon him/her attaining the retirement age.

[25] Prior to her appointment as the Deputy CEO of the second respondent, the appellant was the Director of Registration Services of the second respondent. Her appointment as Deputy CEO was made pursuant to s. 11 of Act 614 which reads:

> (1) The Minister shall appoint any person to be the Chief Executive Officer of the Commission on the terms and conditions as he may determine and may revoke the appointment of any person so appointed.
>
> …
>
> (4) The Minister may appoint such number of Deputies Chief Executive Officer as may be necessary and may revoke the appointment of any person so appointed.

[26] The Minister was undoubtedly empowered to revoke the appointment of the appellant as Deputy CEO. But was the Minister empowered to dismiss the appellant from service in the second respondent, which the Minister purported to do by his letter dated 28 November 2012?

[27] Pertinent to a disciplinary proceeding against an employee of the second respondent, s. 6 of Act 605 mandates:

> (1) The disciplinary authorities in respect of the various categories of officers shall be the Disciplinary Committees established in accordance with Part I of the Third Schedule and the provisions of that Part shall apply to, and be complied with by, every Disciplinary Committee so established.
>
> (2) In the exercise of its disciplinary jurisdiction, the Disciplinary Committees shall comply with the procedures set out in the Regulations and shall have the power to take the disciplinary action and impose the disciplinary punishments set out in the Regulations.

[28] The DC must comply with the procedure set out in the Regulations set out in Part V of the Second Schedule to Act 605. The DC complied with regs. 32 to 38. But the DC did not comply with reg. 39 which reads:

Powers of the Disciplinary Committee

If, after considering the officer's representation and the report of the Investigation Committee, if any, the appropriate Disciplinary Committee:

(a) finds the officer guilty of the disciplinary offence alleged to have been committed by him and that the officer should be dismissed or reduced in rank, the Disciplinary Committee shall impose the punishment of dismissal or reduction in rank, as it deems appropriate;

(b) finds the officer guilty of the disciplinary offence alleged to have been committed by him but that, after taking into consideration the circumstances in which the disciplinary offence was committed and other mitigating factors, such offence does not warrant a punishment of dismissal or reduction in rank but warrants the imposition of a lesser punishment, the Disciplinary Committee shall impose upon the officer any one or more of the punishments other than dismissal or reduction in rank as specified in regulation 40 as it deems appropriate; or

(c) finds the officer not guilty, the Disciplinary Committee shall acquit him.

[29] Both s. 6 and reg. 39 of Act 605 gave the power to the DC to find the appellant guilty and impose the punishment of dismissal. The DC found the appellant guilty and made the recommendation to the Minister to revoke the appointment of the appellant as Deputy CEO and to dismiss the appellant. The Minister accepted the recommendation of the DC. Thereafter, with the Minister's acceptance of the recommendation, the DC should proceed to impose the punishment of dismissal. But the DC did not do so. Rather, it was the Minister who imposed the punishment of dismissal – "selaras dengan s. 11(1)(b) Akta Suruhanjaya Syarikat Malaysia 2001 (Akta 614) saya dengan ini menamatkan kontrak perkhidmatan dan membatalkan pelantikan Puan sebagai Timbalan Pengarah Eksekutif".

[30] It was argued that the Minister merely executed the will of the DC. But with respect, the Minister had no such power to execute the will of the DC with respect to dismissal. In *Lionel v. Government of Malaysia* [1971] 1 LNS 67; [1971] 2 MLJ 172, the appellant was a temporary clerk-interpreter in the Kelantan Police Contingent. He was transferred to Contingent Police Headquarters in Johore Bahru. In 1962, disciplinary action was taken against him by the Chief Police Officer, Johore, under reg. 32 of the General Orders, Chapter D, for acts of alleged indiscipline. The Chief Police Officer informed him that he had failed to exculpate himself and that it had been decided to terminate his services as a temporary clerk. The appellant appealed, but his appeal to the Public Services Commission was dismissed. He sought a declaration that his purported dismissal by the Chief Police Officer was void, inoperative and of no effect. Citing art. 135(1) of the Federal Constitution per

Ong CJ (Malaysia) (Gill and Ali FJJ in agreement) held the dismissal of the appellant by the Chief Police Officer was void:

> Article 160(1) applies the Interpretation and General Clauses Ordinance 1948 to the interpretation of the Constitution. Section 29 of the Ordinance states that 'where a written law confers upon any person or authority a power to make appointments to any office or place, the power shall, unless the contrary intention appears, be construed as including a power to dismiss …' At the date of the appellant's dismissal the authority which could have appointed him was the Public Services Commission, which, therefore, was the authority having power to dismiss – not the Chief Police Officer who was subordinate to the Public Services Commission. Not having been delegated the power of dismissal generally or in this particular case, the Chief Police Officer's act was clearly contrary to the Constitution and therefore void: see *SS Kanda v. Government of the Federation of Malaya* [1962] MLJ 169 171–172. That the appellant, when accepting appointment in 1953 had expressly agreed to accept one month's notice of termination of his services, is no more an answer to his claim than it was to Inspector Kanda. A public servant is guaranteed security of tenure of his office under Part X of the Constitution, which is the supreme law: see article 4. Just as it is impossible to contract out of the provisions of rent control legislation, a *fortiori* must the terms of the appellant's appointment (including regulation 36 of General Orders, Chapter D) be invalid where it is inconsistent with the Constitution.

[31] The second respondent was the appointing and therefore the dismissing authority. Pursuant to s. 6 and reg. 39 of Act 605, the power of dismissal was delegated to the DC. Only the DC could dismiss the appellant. The Minister was empowered to accept or turn down the recommendation of the DC, to appoint or revoke the appointment of the appellant as the Deputy CEO. But the Minister had no actual or delegated power to dismiss the appellant. As said, only the DC could dismiss the appellant. By contrast, in *Goh Ching Huat*, the dismissal letter, although signed by the deputy of the author, was nonetheless the act of the disciplinary authority – "It did not matter who eventually signed it" (*Goh Ching Huat* at [24] per Richard Malanjum CJ (Sabah & Sarawak), delivering the judgment of the court). Dismissal in *Goh Ching Huat* was by the proper authority. But in the instant case, the appellant was dismissed by the Minister and not by the DC. The impugned dismissal was void.

[32] For the above reasons, we unanimously answer the question of law in the negative, allow this appeal with costs, and set aside the orders below.

[33] The appellant, who attained the age of retirement in 2015, could not be reinstated to employment at her last grade. In view of that, we could only order the second respondent, which we do, to pay to the appellant (i) wages at her last grade for the period from date of dismissal to 5 December 2015, and (ii) all gratuities and retirement benefits calculated as if the appellant had retired on 5 December 2015.